give in addition and bind the property as security for the obligation. But the court holds all the proceeds, both money and obligation, and claimants must come to it if they seek payment.[7] It must be remembered that the buyer is under no obligation except by the terms of the sale and that the property is entirely free from the old liens and subject only to a new one as security for the obligation.

If this analysis is sound, it is apparent that express reservation of jurisdiction, though sweeping in terms, is in fact only an express statement of what is the court's undisputed jurisdiction — control over the proceeds while in its possession. Judgment liens established by state courts before the federal court took possession are *res adjudicata* and, as the court intimates, will be allowed as such by the federal court. The doctrine does not of course limit the jurisdiction of state courts over rights in the property acquired after the sale, or prevent suits in state courts based on legal interests in the property which existed before the court took possession. The federal court can only sell the debtor's property, and if the marshal purports to sell what in fact belonged to another, the buyer can get no title to that portion.[8] The reservation covers only claims against the proceeds as such of the debtor's property. The general doctrine, it may be added, should apply equally when a state court has possession of the proceeds.[9]

THE RELATION OF MISTAKE TO THE PROBLEM OF INTERPRETATION OF WILLS. — A recent decision of the Supreme Court of Illinois offers opportunity for an examination of the relation which mistake should bear to the problem of interpretation of wills. In this case it was held that a devise of the "north half" of a certain quarter section of land, which the testator did not own, was effectual to convey the legal title to the east half. *Felkel* v. *O'Brien*, 83 N. E. 170.[1] Since the statutes require that wills shall be in writing, signed, and attested, it is obvious that the desires of a testator cannot take effect by virtue of those statutes unless the will contains a proper written expression of those wishes.[2] It follows that before the work of interpretation can begin, it must first be determined that the testator has used words in some sense other than their direct and primary meaning. The fact that the testator has used words whose primary sense does not convey the concept which extrinsic circumstances prove him to have purposed to convey, is some evidence that the testator has used a language which requires interpretation, but it is not conclusive, for there is always present the possibility of mistake. If one who was accustomed to speak of his one hundred and forty-ninth street house as his forty-ninth street house, should

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[7] Mercantile Trust, etc., Co. *v.* Roanoke & S. Ry. Co., 109 Fed. 3; State Trust Co. *v.* Kansas City, etc., Ry., 110 Fed. 10; Julian *v.* Central Trust Co., 193 U. S. 93. The same rule applies when the buyers assume the liability for torts committed by the receivers. Stewart *v.* Wisconsin Cen. Ry. Co., 117 Fed. 782; Central Trust Co. *v.* St. Louis, A. & T. Ry. Co., 59 Fed. 385; Jesup *v.* Wabash, etc., Ry. Co., 44 Fed. 663.

[8] Campbell *v.* Parker, 59 N. J. Eq. 342.

[9] Hutchinson *v.* Green, 6 Fed. 833.

[1] Whitehouse *v.* Whitehouse, 113 N. W. 759 (Ia.); Patch *v.* White, 117 U. S. 210. *Cf.* Thomson *v.* Thomson, 115 Mo. 56; Lynch *v.* Lynch, 142 Cal. 373; Williams *v.* Williams, 189 Ill. 500. But see Tucker *v.* Seaman's Aid Society, 7 Met. (Mass.) 188.

[2] See Thayer, Prel. Treatise on Evidence, 395; Hawkins, 2 Jurid. Soc. Papers, 298, 302. *Cf.* Gibson *v.* Minet, 1 H. Bl. 569, 614.

by will dispose of his "forty-ninth street house," [3] it is clear that he has made an exact written expression of the conception which he entertained, though it is in a unique language which the court may translate if the spirit of the statute of wills permits the use of language that does not convey its meaning to persons familiar with the national speech, which has been thus perverted.[4] On the other hand, when one who owns and intends to devise the southeast quarter of a certain section of land describes it as the northeast quarter of that section, the words themselves bear almost conclusive evidence that the testator was using, not his own peculiar language, but rather the language of a particular survey of that section and, by inadvertence, has failed to choose the particular words of that language which would give a written expression of his intent. The element of mistake has entered and defeated the testator's purpose to comply with the statute of wills.

It has been suggested, however, that the court may strike out the "false" words of description and thus produce an equivocal description which may then be applied to the land which the testator intended to devise.[5] While it may be open to grave doubt whether or not words which apply equally well to more than one thing may be said to designate any particular one of them,[6] the conclusive argument against this contention is that courts cannot, with propriety, strike from a will words inserted by mistake. If the words are actually stricken from the instrument, the altered document is not the writing which the testator signed and the witnesses attested.[7] If, on the other hand, the "striking out" is purely fictitious, it is but a circuitous method of "interpretation."

Because the process of interpretation cannot be used to correct mistakes in wills, it does not follow that our courts are helpless to relieve the situation. It is submitted, however, that equity alone can adequately deal with the matter. How far the chancellor would go in declaring that the legal titles which have accrued because of a testator's inadvertence shall be held in constructive trust for the intended beneficiaries, is problematical. But a due regard for the rights of third persons who, before any question of construction has been raised, have reasonably acted in reliance on the primary meaning of the words of a will,[8] demands that the problem be solved by a court which can both protect such persons, and, as far as possible, effectuate the desires of testators.

TIME WHEN AN INHERITANCE TAX ON PERSONALTY ACCRUES. — Inheritance tax statutes ordinarily provide for a tax when property passes by will or by intestate laws to any person except a father, mother, brother, etc. The tax is imposed not on the property transferred, but solely on the

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[3] Peters *v.* Porter, 60 How. Pr. (N. Y.) 422.

[4] *Cf.* Wigram, Interpretation of Wills, 10.

[5] Patch *v.* White, *supra;* Whitehouse *v.* Whitehouse, *supra.*

[6] See Mr. Justice Holmes in 12 HARV. L. REV. 417.

[7] See Rhodes *v.* Rhodes, 7 App. Cas. 192, 198. The English Court of Probate does, on proffer for probate, strike out such words, unless the will was read over to the testator before execution. It is believed that this anomalous doctrine has never been tested in a court of appeal. In the Goods of Duane, 2 Sw. & Tr. 590; In the Goods of Boehm, [1891] P. 247.

[8] In Patch *v.* White, *supra,* the testator died in 1832 and the first argument of the ejectment suit brought against a third person was not heard by the Supreme Court until 1885.